Congressional Research Service
Informing the legislative debate since 1914

MEMORANDUM March 15, 2016

To: House Committee on Science, Space, and Technology Subcommittee on Oversight

From: Brent D. Yacobucci, Section Research Manager, x7-9662

Subject: **Testimony for Hearing on "Racing to Regulate: EPA's Latest Overreach on Amateur Drivers"**

Good morning Chairman Loudermilk, Ranking Member Beyer, and Members of the Subcommittee. My name is Brent Yacobucci. I am the Energy & Minerals Section Research Manager for the Resources, Science, and Industry Division of the Congressional Research Service. I have been asked to provide background and discuss CRS' research on anti-tampering provisions and exemptions within Title II of the Clean Air Act, and to discuss policy options to exempt racing vehicles from those anti-tampering provisions. Congressional guidelines on objectivity and non-partisanship require that I confine my testimony to technical, professional, and non-advocate aspects of matters under consideration, and that I limit myself to questions within my field of expertise. Although I can discuss policy options and potential ramifications, CRS does not take a position on pending or proposed legislation.

I have been with CRS for 17 years in various positions, providing analysis on automotive design, emissions controls, and vehicle-related provisions of the Clean Air Act. I have a bachelor's degree in mechanical engineering from the Georgia Institute of Technology and a master's degree in public policy from The George Washington University. I am a member of the Society of Mechanical Engineers and the Society of Petroleum Engineers, although today I am representing only CRS.

Tampering Provisions of the Clean Air Act

On Monday, July 13, 2015, the Environmental Protection Agency (EPA) issued proposed regulations for greenhouse gas emissions from medium- and heavy-duty vehicles and engines.[1] Included in the proposal are provisions that EPA maintains are clarification of long-standing policy, but which the Specialty Equipment Market Association (SEMA) and others argue constitutes new policy restricting vehicle owners' ability to convert on-road motor vehicles to dedicated racing vehicles, and for parts suppliers (such as those represented by SEMA) from selling retrofit kits and other parts to those owners. The original public comment period ended September 11, 2015. Subsequently, in response to comments received from SEMA[2] and to present new emissions and modeling data unrelated to racing vehicles, EPA

[1] Environmental Protection Agency and Department of Transportation, "Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles--Phase 2; Proposed Rule," 80 *Federal Register* 40137-40766, July 13, 2015.

[2] Stephen B. McDonald, Vice President, Government Affairs, *Re: Docket: EPA-HQ-OAR-2014-0827*, Specialty Equipment Market Association, Washington, DC, December 28, 2015, http://www.regulations.gov/#!documentDetail;D=EPA-HQ-OAR-2014-0827-1469.

reopened the docket for comments (limited to the new data and to the issues raised by SEMA) on March 2, 2016; the new comment period is scheduled to run through April 1.[3]

The key policy question is whether EPA considers a vehicle operated solely for racing as a "motor vehicle," and thus subject to the anti-tampering and defeat device provisions of the Clean Air Act. Title II of the Clean Air Act provides a definition for, among other things, "motor vehicle." The sale of a new motor vehicle requires the automaker to supply a "certificate of compliance" with federal emissions standards. Under Section 203 of the Clean Air Act it is unlawful to remove, "bypass, defeat, or render inoperative" any part of a motor vehicle's emissions control system.[4]

In the Clean Air Act Amendments of 1990, in establishing EPA's authority to regulate "nonroad vehicles," Congress explicitly defined nonroad vehicles to exclude those used solely for competition.[5] However, no similar provision explicitly exempts a racing vehicle from the definition of "motor vehicle" after it has been certified as such. CRS could not identify any other provisions within the Act to explicitly allow or preclude EPA from reclassifying motor vehicles as some other class of vehicle. Thus, at issue is arguably a difference in interpretation between EPA and SEMA. EPA maintains that its position is part of a larger prohibition on reclassifying motor vehicles for any purpose. SEMA, on the other hand, maintains that EPA and the Act's silence on the topic before 2015 means that such conversions are allowed.[6]

Pursuant to the Clean Air Act Amendments of 1990, in November 2002 EPA established emissions standards for recreational nonroad vehicles and engines – including motorcycles, all-terrain vehicles (ATVs), and snowmobiles.[7] Within those rules, EPA provided specific procedures and guidance for how new nonroad motorcycles, or "dirt bikes," can be converted from recreational use to competition-only. Specifically, only nonroad bikes may be converted.[8] Before doing so, the owner must destroy the original emissions compliance label attached to the dirt bike, and the owner may not then use the bike for recreation. If the owner later sells the dirt bike, he or she must inform the purchaser that it has been modified and may only be used for competition. This process is, to our understanding, based solely on owner compliance, and EPA does not maintain any sort of database of these conversions.

EPA and the National Highway Traffic Safety Administration (NHTSA), part of the Department of Transportation, also provide temporary exemptions for cars and trucks imported for racing purposes. In those cases, importers must follow a more detailed process to request an exemption from EPA and NHTSA. These exemptions are granted on a case-by-case basis. Importers must supply to EPA, among other things, the Vehicle Identification, or VIN, Number, a list of race-specific characteristics (such as roll bars/cages and racing harnesses), a list of characteristics that preclude the vehicle's safe use on roads (for example, lack of a reverse gear or headlights), and photos of the vehicle. In guidance available on its

[3] Environmental Protection Agency and Department of Transportation, "Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles--Phase 2--Notice of Data Availability," 81 *Federal Register* 10822-10826, March 2, 2016.

[4] 42 U.S.C. §7522(3).

[5] 42 U.S.C. §7552 (11).

[6] Specialty Equipment Market Association, *Debunking the Myths: EPA Proposal to Prohibit Conversion of Vehicles Into Racecars*, Washington, DC, February 11, 2016, https://www.sema.org/sema-enews/2016/06/debunking-the-myths-epa-proposal-to-prohibit-conversion-of-vehicles-into-racecars.

[7] Environmental Protection Agency, "Control of Emissions From Nonroad Large Spark-Ignition Engines, and Recreational Engines (Marine and Land-Based); Final Rule," 67 *Federal Register* 68242-68447, November 8, 2002.

[8] Environmental Protection Agency, *Emission Exemption for Racing Motorcycles and Other Competition Vehicles*, EPA420-F-02-045, Ann Arbor, MI, September 2002, http://www3.epa.gov/nonroad/2002/f02045.pdf.

website, EPA specifically states that "not all vehicles used in races are excluded from emissions compliance. Determinations are based on the capability of the vehicle, not its intended use."[9]

This distinction between a vehicle's capabilities and its intended use is key to EPA's position. Going back as far as at least 1974, EPA has maintained that it would make determinations on exclusions from the motor vehicle definition based on vehicle design, not intended use.[10] Since that time, EPA has employed that test for a variety of uses, including off-road vehicles, kit cars, vocational vehicles, and imported racing cars. CRS was unable to find a document from EPA from before 2015 that explicitly stated that conversions of motor vehicles for racing were not eligible for an exemption. However, nor could CRS identify provisions in federal statute or regulations which would explicitly allow for a certified motor vehicle to be classified as something else for purposes of the anti-tampering provisions.

Enforcement of Tampering Provisions

In terms of enforcement of the tampering and defeat device provisions, EPA has historically not taken action against individuals, despite the fact that Congress granted the agency that authority in the 1990 Clean Air Act Amendments. Before 1990, the anti-tampering provisions applied to automakers, parts manufacturers, and repair shops. In all enforcement actions CRS could identify, automakers (original equipment manufacturers, or OEMs), parts suppliers, and repair shops have been the subject of enforcement. Additionally, CRS could identify no instances where enforcement actions were taken against parts suppliers who were operating solely in the racing parts market. Further, CRS could find no instances of EPA targeting enforcement on individuals modifying vehicles, either for road or track use.

Targets of EPA enforcement actions have included large automakers and smaller after-market manufacturers. In some of the supplier cases, settlements between EPA, the Department of Justice, and the defendants were based on the sale of defeat devices to road vehicle users despite claims by the manufacturer that the parts were for off-road or nonroad use only.[11] A key issue is that for motor vehicles modified for racing, there may be no way to produce parts that would only operate on modified motor vehicles.

In response to concerns raised by SEMA and others, an EPA spokesperson stated publicly that the agency remains "primarily concerned with cases where the tampered vehicle is used on public roads, and more specifically with aftermarket manufacturers who sell defeat emission control systems on vehicles used on public roads."[12] This statement may not be sufficient to address concerns of racing parts suppliers as EPA maintains that their actions may still be illegal even if EPA chooses not to focus enforcement action on them.

Legislative Options

At least one bill, H.R. 4715, has been introduced in the 114th Congress to address the issue of EPA's enforcement of tampering provisions for racing vehicles. The bill would amend the Clean Air Act to exclude vehicles used solely for competition from the definition of "motor vehicle," and would explicitly

[9] Environmental Protection Agency, *Procedures for Importing Vehicles and Engines into the United States*, EPA-420-B-10-027, Washington, DC, July 2010, p. 36, https://www.epa.gov/sites/production/files/2014-02/documents/420b10027.pdf.

[10] Environmental Protection Agency, "Control of Air Pollution from New Motor Vehicles and New Motor Vehicle Engines -- Exclusion and Exemption of Motor Vehicles and Motor Vehicle Engines," 39 *Federal Register* 32609, September 10, 1974.

[11] Department of Justice, *Federal Settlement Targets Illegal Emission Control "Defeat Devices" Sold for Autos*, Press Release 07-490, Washington, DC, July 10, 2007, https://www.justice.gov/archive/opa/pr/2007/July/07_enrd_490.html.

[12] Bob Sorokanich, "No, the EPA Didn't Just Outlaw Your Race Car," *Road & Track*, February 9, 2016, http://www.roadandtrack.com/motorsports/news/a28135/heres-what-the-epas-track-car-proposal-actually-means/; Patrick George, "The EPA's Crackdown on Race Cars, Explained," *Jalopnik*, February 9, 2016, http://jalopnik.com/the-epas-crackdown-on-race-cars-explained-1758111546.

exempt such vehicles from the anti-tampering provisions of the Act. The bill would direct EPA within 12 months of enactment to finalize regulations to implement the changes.

However, many enforcement questions would likely remain if H.R. 4715 or similar legislation were enacted. For example, how would EPA implement the new provisions? The agency could choose among a range of options with varying stringency. On the less stringent side, EPA could require actions similar to those for competition-only nonroad vehicles, such as racing dirt bikes, where the owner is required to destroy the emissions compliance label – or the certificate of compliance in the case of a former motor vehicle – and that such actions would be based on expectations of owner self-compliance. On the other end of the spectrum, EPA could require detailed information similar to that required for imported racing cars. The agency could also require that for de-certification the vehicle owner surrender the certificate of compliance to EPA and have the car registered in a database of converted vehicles. If that were the case, racing parts suppliers could query the database to verify that individuals are purchasing parts solely for competition vehicles.

A second question raised by this legislation is whether there will be unintended interactions with other federal and state laws. Various federal agencies, including the Department of Transportation and Customs and Border Protection within the Department of Homeland Security, have jurisdiction over the import, export, sale, and/or use of motor vehicles. Modifying the definition of motor vehicle in the Clean Air Act may or may not affect definitions in other parts of the U.S. Code. Each state also has its own statutes, regulations, and procedures for defining, registering, and regulating motor vehicles and racing vehicles. Currently in many cases state and federal definitions and classifications differ. It is possible that this legislation could lead to further confusion, with more instances of a vehicle being considered a motor vehicle for some federal agencies and/or states, and a non-motor vehicle for others. The ramifications of this are beyond the scope of my testimony.

Finally, another question is whether H.R. 4715 or similar legislation would or should establish authority for re-certifying former competition vehicles as motor vehicles in the future, allowing their return to the road, or whether such a process would be a “one-way valve,” allowing for conversion to racing but not back.

Please keep in mind that these are only some of the potential policy questions related to the bill. I thank the Subcommittee for its time, and I am happy to answer any questions you have.